International Municipal Lawyers Association
www.imla.org

IMLA NEWS
Issue 14 – July 17, 2014

Religion: Indiana Law Which Does Not Authorize Humanists to Perform Marriages is Unconstitutional

Center for Inquiry, Inc. v. Marion Circuit Court Clerk, No. 12-3751 (7th Cir. July 14, 2014)

An Indiana law which specifically allows ten different categories of clerics and municipal officials to solemnize marriages but does not allow humanists (who are "secular celebrants" and not clergy) to solemnize marriages, violates the First Amendment.

The Center for Inquiry is a nonprofit organization that believes "it is possible to have strong ethical values based on critical reason and scientific inquiry rather than theism and faith" and claims it serves the same role in members' lives as religion. It has leaders within its ranks certified as "secular celebrants," who, in many states, solemnize marriages. However, the leader in Indiana cannot perform such a task because the state law does not recognize humanist leaders as "clergy." Indiana state law provides "[m]arriages may be solemnized by any of the following: (1) A member of the clergy of a religious organization (even if the cleric does not perform religious functions for an individual congregation), such as a minister of the gospel, a priest, a bishop, an archbishop, or a rabbi. (2) A judge. (3) A mayor, within the mayor's county. (4) A clerk or a clerk treasurer of a city or town, within a county in which the city or town is located. (5) A clerk of the circuit court. (6) The Friends Church, in accordance with the rules of the Friends Church. (7) The German Baptists, in accordance with the rules of their society. (8) The Bahai faith, in accordance with the rules of the Bahai faith. (9) The Church of Jesus Christ of Latter Day Saints, in accordance with the rules of the Church of Jesus Christ of Latter Day Saints. (10) An imam of a masjid (mosque), in accordance with the rules of the religion of Islam."

The law further provides that "anyone not on this list who purports to solemnize a marriage commits a crime."

The Center filed suit, alleging this law violates the First Amendment by elevating some religions to a preferred role and seeking an injunction against enforcement of the law.

The District Court sided with defendants, holding subsections (1) and (6) through (10) were simply accommodations to religions, and that required differentiation among religious adherents and some non-religious groups. The lower court noted that anyone that obtains "clergy" credentials could solemnize a marriage in the state, and that, as the state noted, the humanist group could "call itself" a religion and that "it would be good enough for the state." Moreover, it also noted a couple could just carry out the non-legal ceremony and then subsequently get a marriage license. The Center, finding these options unacceptable, appealed.

HELD: The Seventh Circuit reversed, holding that the Indiana marriage law violates the First Amendment.

DISCUSSION: The Circuit Court noted that the Supreme Court prohibits distinctions "between religious and secular beliefs that hold the same place in adherents' lives" and that the Circuit itself held in 2005 that states must treat atheism as favorably as theistic religion when accommodating prisoners. It held the District Court's view - that these precedents were not applicable since the plaintiff's humanism is not a religion - "misses the point" because it does not matter whether plaintiffs consider their belief system to be a religion per se--they still get the benefit of the First Amendment's neutrality principle.

Indiana argued that the humanists were not excluded under the law because they could simply get married in three steps instead of just two as traditional religious adherents can. In addition to obtaining a marriage license and then having the marriage solemnized by clergy, the humanists could simply have a court clerk or similar functionary solemnize the marriage. The Seventh Court held this just "restates the discrimination of which the plaintiffs complain" because while others "can solemnize their marriage in public ceremonies conducted by people who share their fundamental beliefs; humanists can't. Humanists' ability to carry out a sham ceremony, with the real business done in a back office, does not address the injury of which plaintiffs complain."

Indiana then relied on *Marsh* and *Town of Greece* for the proposition that states can support religious views without extending similar support to non-religions, but the Court found this precedent immaterial. It noted while the cases cited concerned what an agent of the government can say while carrying out a government operation, the case at hand concerned state regulation of private conduct.

The Indiana law was deemed arbitrary and irrational. On one hand, counsel for the state confirmed that "Buddhists are excluded because their religion does not treat marriage as a sacrament and does not have (in the [state's] words) an 'organizational commitment to ... marriage'" and because Buddhists, like humanists, do not have "clergy." On the other hand, Quakers, who have, in Indiana's eyes, the same shortcomings as Buddhists and humanists, are afforded an exception under subsection (6), and Shinto, which suffers only one shortcoming because it has clergy but no immortal god, are afforded an exception under (1). Furthermore, at oral argument the state's counsel confirmed that the High Priestess of the Church of Satan and Wiccans can solemnize marriages in the Indiana because they do have a more traditional religious structure with clergy and sacraments.

This was too ad hoc for the Circuit. It found it "irrational to allow humanists to solemnize marriages if, and only if, they falsely declare that they are a 'religion'" and "absurd to give the